

**Association of Bank Officers, Malaysia v.
Oversea - Chinese Banking Corporation Ltd.**

[1994] 3 CLJ

Harun bin Mahmud Hashim J.

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**ASSOCIATION OF BANK OFFICERS,
MALAYSIA**

v.

**OVERSEA - CHINESE BANKING
CORPORATION LTD.**

HIGH COURT, KUALA LUMPUR
TAN SRI DATO' HARUN BIN MAHMUD
HASHIM J.
[ORIGINATING SUMMONS NO.
A 104A OF 1985]
17 JUNE 1994

INDUSTRIAL LAW: Whether arrears of wages paid for retrospective wage increases attract EPF contributions - Whether such arrears of wages attract contributions towards Retirement Benefits under a Collective Agreement between Malayan Commercial Banks Association, of which the defendant was a member, and the plaintiff - Consideration of Article 30(2)(a) of the Collective Agreement.

INTERPRETATION: Employees Provident Fund Act 1951 ss. 2, 7, 16A - Definition of "amount of wages for the month" in s. 2 - Whether the word "otherwise" in definition of "wages" means arrears of wages other than payable monthly, weekly or daily - Application of the ejusdem generis rule.

The plaintiff is a trade union of employees and the defendant, a member of a trade union of employers. Both unions entered into a Collective Agreement ("the Agreement") on 11 July 1984 with retrospective effect from 1 January 1984 for 3 years. The Industrial Court took cognizance of it under s. 16 of the Industrial Relations Act 1967 and accordingly bound the plaintiff and defendant. Under the Agreement certain officers of the defendant bank were entitled to increased pay. The arrears were duly paid in a lump sum to all eligible employees.

The plaintiff contended that the defendant should have paid the EPF contributions on the arrears of salary together with the additional 4% on the arrears as retirement benefits under Article 30 of the Agreement. The defendant disputed this contention as the employer trade union had verified with the EPF Board that the contributions were not payable.

Held:

[1] It could be seen from the provisions that the employer was liable to pay monthly

a contributions, that is to say, he had to pay every month the amount of contributions based on the actual wages due to the employee at the time of payment. **The liability to pay was only in respect of a current month** and if he did not pay he was liable to prosecution under s. 16A of the Employees Provident Fund Act 1951 ("the Act"). The several provisions referred to clearly indicated the present and did not relate to the past. The argument that the word "otherwise" in the definition of "wages" meant arrears of salary or wages other than payable monthly, weekly or daily was without merit. Applying the *ejusdem generis* rule the word "otherwise" meant hourly or twice monthly or yearly. For those reasons, EPF contributions were not payable on arrears of salary.

[2] The compulsory statutory contribution by the employer was 11% of the employees' wages (Third Schedule). Section 7(2) of the Act made provision for increased contribution above the statutory limit. Section 7(3) of the Act provided the procedure for such election. The effect of electing to contribute an increased rate, in this case 4%, above the statutory rate, was that the increased contribution was deemed to be the rate set out in the Third Schedule. This meant that the provisions of the Act relating to the payment or non-payment of contributions applied. It followed that the payment of the 4% increased contribution (the retirement benefits) was also based on wages due for the current month. Indeed, the proviso to s. 7(3) of the Act clearly stated that the increased rate could not be made to take effect retrospectively. For those reasons, the arrears of wages did not include the 4% payable under Article 30(2)(a) of the Agreement until election had been made under s. 7(3) of the Act and to take effect as prescribed by the EPF Board.

[Declaratory orders granted with no orders as to costs].

Legislation referred to:

Employees Provident Fund Act 1951, ss. 2, 7 & 16A(1), Third Schedule

h Industrial Relations Act 1967, s. 16
Trade Unions Act 1959

For the appellant - Balwant Singh; M/s. Balwant Singh, Sidhu & Co.

For the respondent - T.M. Verugheze; M/s. Varughese & Co.

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JUDGMENT

Harun bin Mahmud Hashim J:

This is an application for declarations on:

1. Whether arrears of wages paid for retrospective wage increases attract Employees Provident Fund (EPF) contributions.
2. Whether such arrears of wages attract contributions towards Retirement Benefits under the collective agreement signed on the 11 July 1984, between Malayan Commercial Banks Association (of which the defendant is a member) and the plaintiff.

The plaintiff is a trade union of employees and the defendant a member of a trade union of employers, both registered under the Trade Unions Act 1959. The two trade unions entered into a collective agreement on 11 July 1984 with retrospective effect from 1 January 1984 for a period of three years. The collective agreement was deposited with the Industrial Court which took cognizance of it under s.16 of the Industrial Relations Act 1967 and accordingly bound the plaintiff and the defendant. Under the collective agreement, Class II officers of the defendant bank are entitled to an increase in pay. The defendant accordingly paid arrears of salary in one lump sum to all eligible employees in July 1984.

The plaintiff contends that in paying out the arrears of salary, the defendant should have paid to the EPF contributions on the **arrears of salary** together with the additional 4% of salary on the arrears as **retirement benefits** under Article 30 of the collective agreement. The defendant says that the employer trade union (The Malayan Commercial Banks Association) after consulting with the EPF Board, EPF contributions are not payable in respect of arrears of salary and the retirement benefits. Hence this application.

In construing an Act of Parliament, the Act must be read as a whole.

Section 7 of the Employees Provident Fund Act 1951 reads:

- (1) Subject to the provisions of s. 16, every employee and every employer of a person who is an employee within the meaning of this Act shall be liable to pay monthly contributions at the rate respectively set out in the Third Schedule to this Act:

Provided that the Board may, at its discretion and on such terms and conditions as it may

a impose, authorize an employer, or a class or classes of employers, to pay such contributions at intervals of three months.

b (2) Without prejudice to the provisions of subsection (1), an employer and an employee or either of them may, at any time elect to pay monthly contributions at a rate which exceeds the rate respectively set out in Third Schedule to this Act by one ringgit or a multiple of one ringgit.

c (3) Notice of such election shall be given to the Board in such manner and form as may be prescribed by the Board and where any such notice has been given, this Act shall, in respect of any employer or employee who has elected as aforesaid, apply as if the rate of contribution which such employer or employee has elected to pay, were the rate respectively set out in the Third Schedule to this Act:

d Provided that an election cannot be made to take effect retrospectively.

(4) An employer and employee or either of them may, at any time, revoke his election made under subsection (3).

Section 16 (Approved Funds) is not relevant to this application.

e Section 16A(1) provides:

Any person who -

f (c) being an employer, fails within such period as may be prescribed to pay to the Fund any amount which he is liable under this Act to pay in respect or on behalf of any employee in respect of any month,

shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term of not exceeding six months or to both.

g The Third Schedule refers to:

Amount of wages for the month.

Section 2 defines "amount of wages for the month" as:

h in respect of an employee paid monthly or at intervals of longer than a month, the **amount of wages due to him in respect of that month.**

[Emphasis supplied]

"Wages" is defined in the same section as:

i the remuneration in money due to an employee under his contract of service or apprenticeship,

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whether agreed to be paid monthly, weekly, daily or otherwise -

- (a) in respect of normal periods of work to be performed by the employee;

together with any allowance payable by the employer to the employee in respect, either explicitly or impliedly, of high cost of living.

Arrears of Salary

From the above provisions, it will be seen that the employer is liable to pay contributions **monthly**, that is to say, he must pay **every month** the amount (or rate) of contribution based on the actual wages due to the employee at the time of payment. The liability to pay is only in respect of a current month and if he does not pay he is liable to prosecution under s. 16A. The several provisions referred to above clearly indicate the present and does not relate to the past. The argument that the word "otherwise" in the definition of wages to mean arrears of salary or wages other than payable monthly, weekly or daily is without merit. Applying the *ejusdem generis* rule the word otherwise means hourly or twice monthly or yearly.

For these reasons, I hold that EPF contributions are not payable on arrears of salary.

Retirement Benefits

Article 30(2) of the Collective Agreement provides, *inter alia*:

- (a) the Bank shall contribute each month 15% of the officer's salary for that month to the Employees Provident Fund. Such contribution shall be deemed to be inclusive of any employer's contribution to the EPF as may be prescribed by law from time to time. For the purposes of this paragraph, salary means "wages" as defined by s. 2 of the Employees Provident Fund Act 1951.

The Article also makes provision for the computation of retirement benefits for service up to 31 December 1980 in accordance with the terms applicable up to that date. Article (2)(a) replaces the previous practice of the several banks in funding retirement benefits. The compulsory statutory contribution by the employer is 11% of the employees wages (Third Schedule). Section 7(2) makes provision for increased contribution above the statutory limit. Section 7(3) provides the procedure for such election.

- a** The effect of electing to contribute an increased rate, in this case 4%, above the statutory rate, is that the increased contribution is deemed to be the rate set out in the Third Schedule. This means that the provisions of the Act relating to the payment or non-payment of contributions applies. It follows that the payment of the 4% increased contribution (the retirement benefits) is also based on wages due for the current month. Indeed, the proviso to s. 7(3) clearly states that the increased rate cannot be made to take effect retrospectively.

- b** For these reasons, I hold that the arrears of wages do not include the 4% of salary payable under Article 30(2)(a) until election has been made under s. 7(3) and to take effect as prescribed by the EPF Board.
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Declaratory orders accordingly.

- d** There will be no order as to costs.
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